Supreme Court, U.S.
FILED

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No.

In The Supreme Court of The United States

October Term, 1996

Friedrich Lu
Petitioner

v.

David F. Hadlock, Jeffrey C. Turk, Michael J. Powers, Karen Schultz Breda, Laurence M. Starr, Richard Portal, Nestor Hernandez, Antonio Familia, George A. Berman, Andrea F. Nuciforo, Jr., Posternak, Blankstein & Lund, Russell F.Conn, Maria E. DeLuzio, Conn, Kavanaugh, Rosenthal, Peisch & Ford, Cameron F. Kerry, Michael J. Gill, Wayne P. Godin, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., Ronald L. Brandt, Brandt, Kramer & Figman, Gerald T. Anglin, Tommasino & Tommasino, Willard Stievater, McCullough, Stievater & Polvere
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the First Circuit

Petition for Writ of Certiorari

Friedrich Lu, pro se
123 Sydney Street, #3
Dorchester, MA 02125

36 pp

Questions Presented for Review

1. Can A Party Represent A Co-party Or Co-parties In A Lawsuit? Can A Party Who Is So Represented Further Represent A Co-Party In The Same Lawsuit?

2. Does Federal Court Have Subject Matter Jurisdiction Over Petitioner's Complaint, Whose Causes Of Action Include RICO And The Sherman Act?

3. Should District Court Have Disclosed The Source Of Extraneous Matter And/or Recused Itself?

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Petitioner Friedrich Lu seeks a single petition for a writ of certiorari to cover both judgments (*Friedrich Lu v. David F. Hadlock, et al.* and *Friedrich Lu v. Choate, Hall & Stewart, et al.*) under S.Ct. Rule 12.4, because an identical question (question No. 1) is involved. In addition, Court of Appeals assigned the same panel to hear these two appeals, both of which were docketed *and* decided within one month of each other in the same way (summry disposition). In the level of district court, defendants in the second action presented judgment of the first action (*Lu v. Hadlock*) to press their point that federal court was without subject matter jurisdiction over that action, either. The identity of both actions will be kept separately, even though argument for question No. 1 is the same.

1. The Jurisdiction of this Court is invoked under 28 USC § 1254(1). On February 28, 1997, Court of Appeals summarily affirmed the dismissal entered by the district court on August 5, 1996. On March 27, 1997, Court of Appeals denied rehearing and suggestion for rehearing in banc.

2. Constitutional provisions, statutes, and regulations involved: Disciplinary Rule (DR) 5-101, 5-102, 5-103, 5-105, 5-105(D), and 7-104 of Supreme Judicial Court of Massachusetts Supreme Judicial Court; the Sherman Act (15 USC §§ 1 & 2); RICO (18 USC § 1961 et seq.); 1st Cir. Local Rule 27.1.

Statement of the Case

The complaint,[1] stripped to the bone, was that petitioner Friedrich Lu (Lu's) former lawyers, after being sued for legal malpractice, clandestinely worked with Lu's landlord (and landlord's attorney Starr, both of whom Lu's former attorneys had been hired to fight against in a lawsuit initiated by the landlord). Lu's former lawyers recruited others, continue to orchestrate, finance operations against Lu. According to the state statute, Lu asked them in writing to stop.[2] It failed and this action ensued. Defendants, respondents here, did not deny the allegations but moved for dismissal under Fed.R.Civ.P. (Rule) 12(b)(6).[3] District court literally denied Lu discovery by either quashing subpoenas or refusing to rule his motions. Almost one year later, district court dismissed, in accordance with the Court's allowance of the defendants [sic] motion to dismiss." Confused, Lu asked for clarification; district court stated it was for lack of subject matter jurisdiction. Another motion Lu filed following the August 5, 1996, dismissal order was a motion for recusal: The dismissal order, at 4, n. 2, stated: "In any event, the defendants' victories conclusively belie the notion that their actions have been shams." The "victories," which occurred a few months earlier, was achieved by misconduct: In that state case, defendants moved for dismissal for mootness, and mailed their motion not to Lu's address but to somewhere else -- despite their certificates of service otherwise. On the record, none of the parties mentioned it to the district court. So Lu argued that Rule 12(b)(6) motions should have been converted into Rule 56 motions,

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1. On September 28, 1995, 10 days after commencement of the action, Lu filed First Amended Complaint mainly to correct typographic errors.

2. A copy of Lu's letter was attached to the complaint and reproduced here as App. 20.

3 Their motions to dismiss also listed Rule 12(b)(1) without further elaboration.

and asked to know the source of extrajudicial matter. Defendants avoided this issue completely, never filing an opposition to the motion for recusal, which district court later denied without explanation.[4] Appeal followed.

Argument

Both district court and Court of Appeals do have subject matter jurisdiction.[5] Thus this Court should consider all questions presented for review.

I

Court of Appeals found no merit in Lu's contention regarding attorney conduct, presumably referring to defendants' representing one another.[6] It did not explain its holding, and there respondents (defendants below) avoided the issue. This holding is in conflict with all published opinions. S.Ct. Rule 10(a).

A lawyer can be a party litigant *and* testify in his own case.[7] When a law firm is a party, it can represent itself, despite the fact that members of that firm would have to testify.[8] A lawyer/litigant can hire his own law firm to represent him, provided that the latter is not a co-party.[9] Lu does not challenge these positions.

On the other hand, if a lawyer/litigant is a material *witness* and his status as a named party is a mere formality, his law partner will be disqualified from representing the lawyer/litigant *and* a co-party, because DR 5-102 (A) kicks in. *Estate of Andrews by Andrews v. United States* (E.D.Va.1992) 804F.Supp.820, 827. Both *Estate of Andrews* and *International Electronics Corp. v. Flanzer* (CA2 1975)

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4. During Lu's preparation for the appeal, in the file Lu found an defendants' motion "filed in the open court" at the December, 1995, hearing. In his appellant's brief, Lu said it was not; defendants did not contradict, nor did they explain.

5. The Court of Appeals -- after summarily affirming district court's dismissal "for want of federal subject matter jurisdiction" -- went on to say "we find no merit in appellant's additional contentions regarding discovery, sanction, and attorney conduct." App. at B7. Because "[a] court lacks discretion to consider the merits of a case over which it is without jurisdiction," *Firestone Tire & Rubber Co. v. Risjord* (1981) 449 U.S. 368, 379, accord *Goosby v. Osser* (1973) 409 U.S. 512, 522, n. 8, Lu's petition for rehearing pointed out that if nothing else, its judgment should be reformed to remove the above sentence. *Deposit Guaranty National Bank v. Roper* (1980) 445 U.S. 326, 334-335. That petition was denied.

6. The chart depicting defendants' representation is printed in the same page as Table of Appendix.

7. *Gorovitz v. Planning Board of Nantucket* (1985) 394 Mass. 246,475 N.E.2d 377.

8. *Theobald v. Botein, Hayes, Sklar & Herzberg* (S.D.N.Y.1979) 465 F.Supp. 609.

9. *Borman v. Borman* (1979) 378 Mass. 775, 393 N.E.2d 847, 856; *In re American Cable Publications, Inc.* (CA10 1985) 768 F.2d 1194 (same; collecting cases).

527 F.2d 1288 involved a nominal party, accounting for decisions which at first glance seem odd.

Lu's painstaking research found three decisions essentially prohibiting a party from representing a co-party: *Chang v. Chang* (1993) 190 A.D.2d 311, 597 N.Y.S. 692; *Guiliano v. Carlisle* (1995) 211 A.D.2d 757, 621 N.Y.S.2d 685; *Valley Ranch Development Co. Ltd. v. F.D.I.C.* (CA5 1992) 960 F.2d 550, 556 ("Texas Law does not permit a current [plaintiff's] attorney to take role of co-plaintiff").

When an attorney is implicated in the same or related activity his client is accused of, he would be disqualified.[10] "[A]ctual conflict of interest adversely affecting lawyer's performance renders assistance ineffective."[11] Respondents deliberately set up the conclict-of interest problem as a sure-fire way to reversal if they lose.[12]

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10 *United States v. Cunningham* (CA2 1982) 672 F.2d 1064, 1074-1075; *Unites States v. Kwang Fu Peng* (CA2 1985) 766 F.2d 82, 86; *Mannhalt v. Reed*(CA9 1988) 847 F.2d 576, cert. denied (1988) 488 U.S. 908;*United States v. Salinas* (CA5 1980) 618 F.2d 1092, cert. denied (1980) 449 U.S. 961 (attorney disqualified who trial judge believed was "target" of investigation concerning even(s) for which his clients were indicted); *United States v. Marren* (CA7 1990) 919 F.2d 61 (attorney disqualified for participating in conspiracy); *United States v. Hobson* (CA11 1982) 672 F.2d 825 (same; citing Canon 9); *United States v. Fulton* (CA2 1993) 5 F.3d 605 (same); *In re Investigation before February, 1977, Lynchburg Grand Jury* (CA4 1977) 563 F.2d 652 upheld (W.D.Va.1977) 432 F.Supp. 50; *Government of Virgin Islands v. Zepp* (CA3 1984) 748 F.2d 125, 132 (conviction reversed where defense counsel had actual conflict of interest -- facing potential criminal liability for the same charges on which defendant was tried and acting as prosecuting witness through stipulation); *United States v. Clarkson* (CA4 1977) 567 F.2d 270 (already under indictment for filing fraudulent tax claims on behalf of certain taxpayers, attorney found in contempt for violating order disqualifying him from representing these taxpayers, who were now "potential witnesses" against him); *United States v. Greig* (CA5 1992) 967 F.2d 1018 (actual conflict when attorney implicated in obstructing justice to aid defendant); *United States v. White* (CA5 1983) 706 F.2d 506 (actual conflict when attorneys being investigated concerning prior escape of defendant); *United States v. Levy* (CA2 1994) 25 F.3d 146, 156 (same); *United States v. Ellison* (CA7 1986) 798 F.2d 1102, 1106-1108 (actual conflict when pursuit of defendant's allegations would lead to attorney's malpractice);*United States v. Cancilla* (CA2 1984) 725 F.2d 867 (conviction reversed on unusual facts that defendant's trial counsel had himself engaged in criminal activity related to the conduct for which defendant was convicted and that defendant had no knowledge of any such activity by his counsel); *United States v. McLain* (CA11 1987) 823 F.2d 1457, 1463-1464 (same).

11. *Strickland v. Washington* (1984) 466 U.S. 668, 686, citing *Cuyler v. Sullivan*, 446 U.S. 335, 345-350. Recast *Sullivan* in different wording, *Washington* stated at 692, "prejudice is presumed when counsel is burdened by an actual conflict of interest."

12. See *Wood v. Georgia* (1981) 450 U.S. 261, 267 (agenda on part of theater owner). "Moreover, *Sullivan mandates* a reversal when the trial court has failed to

Using interlocking representation, defendant lawyers has consistently insisted that *everything* going on between them (not only their conversations) is cloaked by attorney-client privilege,and thus not discoverable.[13]

II

District court's Memorandum and Order (dated August 1, 1996, stated:

> "Without belaboring the point, there is nothing in alleged activities of the defendants that would raise Mr. Lu's claims above the level of frivolous." *Id.*, at 5 (App. at B4)
>
> "The Court is convinced that Mr. Lu has failed to state a claim not simply because his assertions do not measure up on one or two elements under a particular federal statute but because these assertions have virtually no relation to the statutes at all." *Id.*, at 6, n. 4 (App. at B4).

Lu's attempt to invoke RICO statute is self-apparent. As for the antitrust claim, in fact this Court long ago addressed the issue, as closely as you can get.[14]

"The interstate character of [Respondents'] is conceded"[15] and district court had no problem with it- so it's not a issue here. At the

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make an inquiry even though it knows or reasonably should know that a particular conflict exists." *Id.*, at 272, n. 18 (emphasis original; internal quotation mark omitted).

13. On technical front, district court's omission permitted "an intolerable situation" to be created. Two defendants (Willard Stievater and his law firm) was represented by a third defendant **Jeffrey C. Turk**, who was in turn represented by co-defendants George A. Berman, et al. -- not to mention Turk was Lu's former counsel. If Lu were to comply with D. Mass. Local Rules concerning a motion on Turk's "clients", Lu was supposed to discuss with their counsel (Turk). But DR 7-104(A)(1) of Mass. Supreme Judicial Court forbids Lu to communicate with Turk, in that he (Turk) was represented. Does this mean Lu ought to consult with Turk's lawyers in matters concerning Turk's clients, even though Turk's lawyers did not represent Turk's clients? Another difficulty Lu faced was, if pursuant to Fed.R.Civ.P. 5, Lu served papers on Turk's lawyer (but not on Turk himself), were Turk's clients considered served?

14. *Binderup v. Pathe Exchange* (1923) 263 U.S. 291, 304-308; *Moore v. New York Cotton Exchange* (1926) 270 U.S. 593, 608-609. *Radovich v. National Football League* (1957) 352 U.S. 445, 453.

15. *Simpson v. Union Oil Co. of California* (1964) 377 U.S. 13, 15; *Standard Sanitary Manufacturing Co. v. United States* (1912) 226 U.S. 20, 50-51 (a corporation having a manufactory in one State and warehouses in several other States held to be engaged in interstate commerce).

pleading stage, general factual allegations may suffice.[16] Rule 8(a) applies to an antitrust case, including market definition.[17] Yet if we accept market as "area of effective competition,"[18] then Lu was not terribly wrong to call "lawsuits" the markets. After all, unusual concepts of market do come up.[19] Defining a relevant market "is a matter of *proof*,"[20] "a factual inquiry for the jury."[21]

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16. "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support." *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555.

17. *Minpeco, S.A. v. Conticommodity Services, Inc.* (S.D.N.Y.1982) 552 F.Supp. 327, 330-331; *Perma Life Mufflers, Inc. v. International Parts Corp.* (1968) 392 U.S. 134, 142; *Swift & Co. v. United States* (1905) 196 U.S. 375, 394-396; *Hammes v. Aamco Transmission, Inc.* (CA7 1994) 33 F.3d 774, 778; *Ancar v. Sara Plasma, Inc.* (CA5 1992) 964 F.2d 465, 468; *Quality Foods de Centro America, S.A. v. Latin America Agribusiness Development Corp.* (CA11 1983) 711 F.2d 989, 994-996; *Frito-Lay, Inc. v. Bachman Co.* (S.D.N.Y.1986) 659 F.Supp. 1129, 1137; *St. Joseph's Hospital, Inc. Hospital Corp. of America* (CA11 1986) 795 F.2d 948, 953-954. Cf. *Summit Health, Ltd. v. Pinhas* (1991) 500 U.S. 322, 328-331 (plaintiff in an antitrust action "need not allege, or prove, an actual effect on interstate commerce to support federal jurisdiction").

18. *Tampa Electric Co. v. Nashville Coal Co.* (1961) 365 U.S. 320, 327-333; *United States v. Philadelphia Nat. Bank* (1963) 374 U.S. 321, 359.

19. *Fortner Enterprises, Inc. v. United States Steel Corp.* (1969) 394 U.S. 495 (credit -- i.e., "money needed to finance a purchase," *id.*, at 508 -- was the tying product, whose market was "credit market," *id.*, at 509, a term readily familiar to us); *Emich Motor Corp. v. General Motor Corp.* (1951) 340 U.S. 558 (same; market is financing); *International Boxing Club of New York v. United States* (1959) 358 U.S. 242, 249-252 (champion boxing contest); *NCAA v. Board of Regents of the Univ. of Oklahoma* (1984) 468 U.S. 85, 95 (relevant market defined as "live college football television" was noted but not reached); *United States v. Paramount Pictures* (1948) 334 U.S. 130, 172-173 (the first-run field of motion pictures) in separate localities); *Times-Picayune Publishing Co. v. United States* (1953) 345 U.S. 594, 610 (advertising market, not readership, of newspaper). See also *Northern Pacific Railway Co. v. United States* (1958) 356 U.S. 1, 7-8. (economic power through extensive landholdings located in checkerboard fashion).

20. (emphasis added) *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.* (1965) 382 U.S. 172, 178. Note the district court in *Walker Process* did not dismiss because plaintiff failed to allege relevant market. Ditto *Superior Court Trial Lawyers Ass'n v. FTC* (1988) 856 F.2d 226, 250 (FTC "has never defined the relevant market or estimate the petitioners' share of it") rev'd on other grounds (1990) 493 U.S. 411.

21. *High Technology Careers v. San Jose Mercury News* (CA9 1983) 996 F.2d 987, 990.

The learned professions are within the terms "trade or commerce" in the Sherman Act, which is intended to strike as broadly as it could.[22] Respondents -- lawyers and "clients" -- are certainly in commerce. So is Lu, who might possibly be described as a private attorney general, or as pursuing his First Amendment right to petition the Government for a redress of grievances. But without doubt there is a "business aspect" to it.[23] Lu is in trade due to prosecuting and defending lawsuits full time[24]; Lu has borrowed more than $ 25,000 so far, to finance[24.5] the "business," hoping one day to recover the loss or even make a profit -- like other litigants and lawyers.[25] True, he has been losing money and his shirt, yet so are most businesses at their initial phase of operation.

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22. *Goldfarb v. Virginia State Bar* (1975) 421 U.S. 773, 786-787. See *United States v. Brown Univ.* (CA3 1993) 5 F.3d 658, 666-668 (setting tuition and financial aid is commerce).

23. *Goldfarb, supra*, at 788.

24. *Goddard v. Chaffee* (1861) 2 Allen (84 Mass.) 395, 79 Am.Dec. 796 (playing violin is a musician's business); *Baker v. Willis* (1877) 123 Mass. 194 (a person can engage in more than one trade); *Allen v. Commonwealth* (1905) 188 Mass. 59, 61 (farming is a business); *Flint v. Stone Tracy Co.* (1911) 220 U.S. 107, 171 (which was referred to with approval in *Von Baumbach v. Sargent Land Co.* (1917) 242 U.S. 503, 514-517); *Atlantic Cleaners & Dyers, Inc. v. United States* (1932) 286 U.S. 427, 434 ("trade" and "commerce" synonymous in 15 USC §1), 436, n. * (contract void in restraint of trade of a single weaver); *American Medical Ass'n v. United States* (1943) 317 U.S. 519, 528, n. 5, citing *In re Duty on Estate of Incorporated Council* (1889) 22 Q.B. 279, 293 and *La Belle v. Hennepin County Bar Ass'n* (1939) 206 Minn. 290, 294, 288 N.W. 788, 790 (bar association, a corporation, was "doing business," so was Ku Klux Klan); *United States v. National Ass'n of Real Estate Boards* (1950) 339 U.S. 485, 489-492; *United States v. Women's Sportswear Manufactures Ass'n* (1949) 336 U.S. 460, 463-464; *Wickard v. Filburn* (1942) 317 U.S. 102, 127-128 (home-grown wheat competes with wheat in commerce). Lu defends lawsuits as respondents sue and countersue. *United States v. Lopez* (1995) 514 U.S. _, 131 L.Ed.2d 626 is distinguished as lawyering, the profession itself, has been held "trade or commerce." *Goldfarb, supra.*

24.5 the source of Lu's financing was at other states and nations, thus another basis of (interstate) "*commerce*." See *Kraft General Foods, Inc. v. Iowa Dept. of Revenue & Finance* (1992) 505 U.S. 71, 84-85 (Rehnquist, CJ, dissenting) (flowing of dividend)

25. See *Roper* (*supra*, at n. 5) 445 U.S. at 338 ("financial incentive"). Acting pro se, Lu can be thought of as two roles (attorney and client) fused into one. Or Lu can be viewed as a sole proprietor.

Besides perjury and forgery of evidences. respondents (as defendants) engaged "massive, concerted, and purposeful activities," *e.g.* fraud on the courts such as knocking off Lu's appeal by tricks) to "deprive [Lu] of meaningful access to the agencies and the courts." *California Motor Transport Co. v. Trucking Unlimited* (1972) 404 U.S. 508, 515, 512, whose language is neutral and seemingly applies equally to plaintiffs and defendants alike. Although reported cases in this field are most predatory lawsuits initiated by plaintiffs, Lu does find one holding *defendants* accountable. *In re Burlington Northern, Inc.* (CA5 1987) 822 F.2d 518, 532. Actually in *California Motor Transport*, the offenders played the role of defendants in "resisting rehearing, reviews or appeals sought by plaintiffs." 1967 *Trade Cas.* ¶ 72, 298, at p. 84, 740.

District court should not have dismissed a case for novel theory.

III

Lu is not sure if impending decision in *Bracey v. Gramley* (1997) _ U.S. _, 136 L.Ed.2d 643 (S.Ct. No. 96-6133) would address this issue. Lu is briefing to preserve the question for revierw.

In *Liljeberg v. Health Services Acquisition Corp.* (1988) 486 U.S. 847, 851-852, the Fifth Circuit twice reversed, determining that "resolution of [Rule 60(b)] motion required factual findings concerning the extent and timing" of district judge's knowledge where the judge had denied said motion summarily.[26]

Liteky v. United States (1994) 510 U.S. 540 also held:

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26. See also *Cigna Fire Underwriters Co. v. MacDonald & Johnson, Inc.* (CA1 1996) 86 F.3d 1260, 1270-1271; *Chessman v. Teets* (1955) 350 U.S. 3-4 ("On the record before us, there is no denial of petitioner's allegations. * * * Without intimating any opinion regarding the validity of the claim, we held that in the circumstances disclosed by the record before us the application should not have been summarily dismissed"). Cf. *Rogers v. United States* (1975) 422 U.S. 35; *Shields v. United States* (1927) 273 U.S. 583; *Fillippon v. Albion Vein Slate Co.* (1919) 250 U.S. 76.

(i) "[Judicial remarks] *may* do so [i.e., support a bias or prejudice challenge] if they reveal an opinion that derives from an extrajudicial source * * *" (emphasis original; *id.* at 555)

(ii) "The 'extrajudicial source' doctrine is one application of this pejorativeness requirement to the terms 'bias' and 'prejudice' as they used in [28 USC] §§ 144 and 455(b)(1)with specific reference to the work of judges." (at 550)

Kennedy, J., concurred and stated, "The acquired skill and capacity to disregard extraneous matters is one of the requisites of judicial office." (at 562)

Patterson v. Colorado (1907) 205 U.S. 454, 462, stated:

> "The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by an outside influence, whether private talk or public print. What is true with reference to a jury is true also with reference to a court."

Judgment was reversed and case reassigned in the decisions listed at n. 27.

Petitioner: Friedrich Lu, pro se

Signed:

Date: April 24, 1997

Address: 123 Sydney Street, #3 Dorchester, MA 02125

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27. *United States v. Microsoft Corp.* (CADC 1995) 56 F.3d 1448, 1464 & 1454, n. 5; *United States v. Sciuto* (CA7 1976) 531 F.2d 842 (prejudgment based on judge's *ex parte* conversation with probation officer); *United States v. Furst*, 886 F.2d at 565, 579-583 (judge engaged in *ex parte* communications with defense counsel indicating that defendant would receive less severe sentence if the latter entered into plea agreement, rather than taking case to trial); *In re Falkner* (CA5 1988) 856 F.2d 716 (judge's cousin had been important participant in key transactions and had communicated to judge material facts, opinions and attitudes); *United States v. State of Alabama* (CA11 1988) 828 F.2d 1532, 1545-1546, cert. denied *sub nom* (1988) 487 U.S. 1210 (judge had extrajudicial, personal knowledge of disputed facts); *Price Brothers Co. v. Philadelphia Gear Corp.* (CA6 1980) 629 F.2d 444, 17/ appeal on remand (CA6 1981) 649 F.2d 416, cert. denied (1981) 454 U.S. 1099 (judge directed his law clerk to conduct off-the-record observation); *Lillie v. United States* (CA10 1992) 953 F.2d 1188 (erroneous admission of evidence from judge's private viewing of accident scene); *Knop v. Johnson* (CA6 1992) 977 F.2d 996, 1010-1011 (judge's *ex parte* communication with witness); *United States v. Vasquez* (CA9 1979) 597 F.2d 192 (jury read extrinsic prejudicial evidence accidentally left in the jury room). *Hathcock v. Navistar Intern. Transp. Corp.* (CA4 1995) 53 F.3d 36, 39, 41 (judge in *ex parte* contact requests plaintiff's counsel to draft order). See *Gibson v. R. G. Smith Co.* (CA6 1990) 915 F.2d 260, 263 (judge relying on *ex parte* communication with a third party to determine frivolity of complaint).

Constitutional Provisions, Statutes, and Regulations Involved

(1) Local Rule 83.6 (4)(B) of U.S. District Court for the District of Massachusetts:
"The ethical requirements and rules concerning the practice of law mean those canons and rules adopted by the Supreme Judicial Court of Massachusetts, embodied in Rule 3:05, 3:07 and 3:08 of said court * * *"

(2) The relevant rules under Rule 3.07 are as follows. Only the heading of disciplinary rules is listed here for a bird-eye view. The full test, copied from Massachusetts Rule of Court (State) West Publishing, 1997, p. 286 et seq., is attached hereby.

DR 5-101 (refusing employment when the interests of the lawyer may impair his independent professional judgment)

DR 5-102 (withdrawal as counsel when the lawyer becomes a witness): Here, the defense counsel are more than witnesses; they are co-defendants.

DR 5-103 (avoiding acquisition of interest in litigation)

DR 5-105 (refusing to accept or continue employment if the interests of *another* client may impair the independent professional judgment of the lawyer): In the instant action, defense counsel's own interests are opposite to those co-defendants they purportedly represented. Like "prisoners' dilemma," co-defendants may turn on each other to avoid heavy penalty.

DR 5-105(D): "If a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner or associate or any other lawyer associated with him or his firm may accept or continue such employment."

DR 7-104 (communication with one of adverse interest): The purported counsel simply can not confer with plaintiff to narrow discovery disputes, as required by Local Rule 37.1(A).

(3) (A) Fed.R.Civ.P. 52(a): "in granting or refusing interlocutory injunctions, the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action." Rule 65(d) ("Every order granting an injunction * * * shall set forth the reasons for its issuance; shall be specific in terms")

(6) First Circuit Local Rule 27.1 (Summary Disposition)
"At any time, on such notice as the court may order, on motion of appellee or sua sponte, the court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented. In case of obvious error the court may, similarly, reverse. Motions for such relief should be promptly filed when the occasion appears, and must be accompanied by four copies of a memorandum or brief."

Appendix

Memorandum and Order, Order of Dismissal, U.S. District Court (D.Mass.) ----------B1
Opinion and Judgment, Court of Appeals for the First Circuit ----------B6
Order denying rehearing and suggestion for rehearing in banc ----------B8
First Amended Complaint (with Demand Letter)----------B9
Canon of Ethics, Massachusetts Supreme Judicial Court -----B18

Representation of defendants at U.S. District Court

defendant/"attorney(s)"	representing	defendant/"client(s)
Cameron F. Kerry, Michael J. Gill		themselves
		Wayne P. Godin,
		Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C
		Richard Portal
Russell F. Conn		himself
		Maria E. DeLuzio
		Conn, Kavanaugh, Rosenthal, Peisch & Ford
		Michael J. Powers
Ronald L. Brandt		himself
		Brandt, Kramer & Figman
		Laurence M. Starr
George A. Berman, Andrea F. Nuciforo, Jr.		themselves
		Posternak, Blankstein & Lund
		David F. Hadlock
		Karen Schultz Breda
		Jeffrey C. Turk

Jeffrey C. Turk representing
Willard Stievater,
McCullough, Stievater & Polvere

UNITED STSATES DISTRICT COURT
DISTRICT OF MASSASCHUSETTS
CIVIL ACTION NO. 95-12041-GAO

FRIEDRICH LU, Plaintiff

v.

DAVID F. HADLOCK; JEFFREY C. TURK; MICHAEL J. POWERS; KAREN SCHULTZ BREDA; LAURENCE M. STARR; RICHARD PORTAL; NESTOR HERNANDEZ; ANTONIO FAMILIA; GEORGE A. BERMAN; ANDREA F. NUCIFORO, JR.; POSTERNAK, BLANK-STEIN & LUND; RUSSELL F. CONN; MARIA E. DELUZIO; CONN, KAVANAUGH, ROTHENTHAL, PEISCH & FORD; CAMERON F. KERRY MICHAEL J. GILL; WAYNE P. GODIN; MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO, P.C.; RONALD L. BRANDT; BRANDT, KRAMER & FIGMAN; GERALD T. ANGLIN; TOMMASINO & TOMMASSINO; WILLARD STIEVATOR; and MCCULLOUGH, STIEVATOR & POLVERE,
Defendants

MEMORANDUM AND ORDER
August 1, 1996

O'TOOLE, D.J.

The plaintiff Friedrich Lu, acting pro se, filed a ten-count suit against several individuals and law firms in connection with an eviction action that the defendant Richard Portal had successfully prosecuted him. After that litigation, developments in large degree resemble the story of the tar baby; every person or lawyer or law firm to have come into contact with the initial dispute seems to have gotten stuck and been made a defendant by Mr. Lu.[1] The several defendants have now moved to dismiss the federal counts against them, arguing that the federal 2> counts are frivolous and that the remaining state-law claims should be dismissed either for want of jurisdiction or pursuant to the Court's discretion to dismiss pendant claims under 28 U.S.C. § 1367(c). The Court agrees and dismisses the case for lack of subject matter jurisdiction.

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1 Indeed, pending before the Court are also motions by Mr. Lu to disqualify the attorneys in this case, a motion which, if granted, would potentially require them to hire additional counsel. The Court's decision here moots these motions.

The complaint alleges a variety of events that, accepting the complaint's assertion as true, began with Portal's recruiting Lu as a tenant in one of Portal's apartments in connection with an insurance fraud. Portal, according to the complaint, needed a resident in the apartment to procure an insurance policy. Once Portal received the policy, however, Portal asked Lu to leave. Lu refused, whereupon Portal initiated ultimately successful eviction proceedings.

Soon thereafter, the circle widened. Lu brought a state court suit against Portal alleging lead poisoning. Two different firms and sets of attorneys represented Portal in that case. At the same time, Lu bought a malpractice case suit against his lawyer and law firm in the eviction case alleging an improper accounting of $308.34 of the retainer Lu had paid. Again, all the defendants in that case, as well as their counsel, are defendants here. A third state case, in which Lu claims wrongful eviction against Portal and others, was also filed. These individuals and their lawyers are defendants here too. 3> Of the ten counts in Lu's complaint, only three are putatively based in federal law: Count I (violation of the Sherman Antitrust Act, 15 U.S.C. § 1), Count II (violation of the Sherman Antitrust Act, 15 U.S.C. § 2), and Count V (violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq.). None of these, however, presents this Court with the substantial question of federal law necessary to support jurisdiction over the case. See Hagan v. Lavine, 415 U.S. 528, 536 (1974); 13B Charles A. Wright et al., Federal Practice and Procedure 2d § 3564 (1984).

Accepting everything Lu has alleged as true and reading his assertions with the recognition that he is a pro se litigant who must not be faulted for inattention to legal niceties, see Rodi v. Ventetuolo, 941 F.2d 22, 23 (1st Cir. 1991), there is nothing in the nature of an antitrust claim in his allegations. A claim under 15 U.S.C. § 1 requires that a plaintiff allege a contract or conspiracy in restraint of trade. A claim under 15 U.S.C. § 2 would require a showing that the defendants have intended to achieve and are close to achieving some monopoly power through anti-competitive or predatory conduct. See Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 453 (1993). Lu alleges nothing of the sort in his complaint. He does not claim or purport to show how trade is being restrained in any way, nor can the Court discern what product or market the plaintiff might be seeking to put at issue, not to 4> mention how the defendants are acting to

monopolize it.[2] Accordingly, neither of Lu's antitrust claims are substantial enough to invoke federal jurisdiction.

The RICO claim is insubstantial as well. Lu's RICO count reads as follows: "All defendants conspire to violate or violate RICO through a pattern of racketeering activities. Enterprise is Hadlock, Turk, Powers, Portal, Starr and Nestor Hernandez. All other defendants are RICO 'person,'" Complaint, ¶ 46. His memorandum on the subject contains only a brief, paragraph-long defense of the claim:

> The Statement of Facts in the complaint is abundant and damaging. Mere chanting of RICO case law, without identifying how the law will apply to the case at bar, will not bring the defendants anywhere. Specter of Rule 11 sanction was raised and ignored. Defendants' bare assertion of lack of predicate acts and continuity can only delude themselves.
>
> Pl. Oppos. to Motions to dismiss at 3, ¶ (c). 5>

Although unstated in the complaint, the only potentially applicable civil RICO provision is 18 U.S.C. § 1962(c), which provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection or unlawful debt.

A claim under § 1962(c) requires a showing of (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985). Racketeering activity, as defined in 18 U.S.C. § 1961(1), includes numerous state

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2 The plaintiff makes an argument for the application of the "sham" exception to the Noerr-Pennington doctrine where persons use the legal process "as an anticompetitive weapons." See City of Columbia v. Omni Outdoor Advertising, 499 U.S. 365, 380 (1991). The problem with that assertion is that, even if the defendants have been using the legal process to harass him (and not to achieve the results they have obtained), there is no market in which they are competing with Mr. Lu or from which they are restraining him from participation; the Court has no reason to consider the exception. In any event, the defendants' victories in state court conclusively belie the notion that their actions have been mere shams. See Professional Real Estate Investors v. Columbia Pictures Indus., Inc., 508 U.S. 49, 59 (1993).

and federal felonies, the only possible relevant one appearing to be mail fraud.[3]

Without belaboring the point, there is nothing in the alleged activities of the defendants that would raise Mr. Lu's claims above the level of frivolous. Hagans, 415 U.S. at 536-38. The persons mentioned as the enterprise are the owner of the apartment from which he was evicted, the owner's and his own counsel in the initial eviction case, and one of the owner's associates. Exactly how or why that is an enterprise is not apparent. If it was one organized to drive Lu from an apartment, that is not enough to bring the case within RICO's ambit. See Apparel Art Int'l, Inc. v. Jacobson, 967 F.2d 720, 722 (1st Cir. 1992) There is no apparent enterprise or racketeering in which the defendants have engaged, and certainly no 6> relevant pattern. In fact, most of the complaint's allegations involve legal work performed by the defendants in response to Lu's suits.

The Court lacks subject matter jurisdiction because of the absence of a substantial federal claim. The mere invocation of a federal statute is not sufficient to confer jurisdiction where the factual allegations pleaded plainly would not support a claim under the statute.

The remaining state law claims must be dismissed as well.[4] See United Mine Workers of America v. Gibbs, 338 U.S. 715, 725 (1966).

For the foregoing reasons, the plaintiff's action is DISMISSED for want of jurisdiction.

SO ORDERED.

August 1, 1996
DATE

George A. O'Toole, Jr. /s/
DISTRICT JUDGE

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3 The complaint alleges at several points that the defendants mailed or caused to be mailed certain forged documents.

4 Because the Court is dismissing the case for want of jurisdiction, it does not reach the defendants' motions to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. However, the reasoning behind the Court's decision would necessarily lead it to agree with the defendants that Lu has not stated a claim on these counts either, and the Count would be strongly disinclined to exercise its pendent jurisdiction pursuant to 28 U.S.C. § 1367(c) over the remaining state claims if its discretion were at issue. The court is convinced that Mr. Lu's has failed to state a claim not simply because his assertions do not measure up on one or two elements under a particular federal statute but because these assertions have virtually no relation to the statutes at all.

UNITED STSATES DISTRICT COURT
DISTRICT OF MASSASCHUSETTS

Friedrich Lu
Plaintiff
V. CIVIL ACTION NO. 95-12041-GAO
David Hadlock, et al.
Defendant

ORDER OF DISMISSAL

O'Toole, D.J. August 5, 1996

In accordance with the Court's allowance of the defendants motion to dismiss on August 1, 1996, it is hereby Ordered that the above-entitled action be and hereby is dismissed.

By the Court,
Catherine Dello Russo /s/
Deputy Clerk

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 96-2243

FRIEDRICH LU,

Plaintiff, Appellant,

v.

DAVID F. HADLOCK, ET AL.,

Defendant, Appellees.

APPEAL FROM THE UNITED STSATES DISTRICT COURT

FOR THE DISTRICT OF MASSASCHUSETTS

[Hon. George A. O'tolle, Jr., U.S. District Judge]

Before

Selya, Circuit Judge,

Cyr, Senior Circuit Judge,

and Boudin, Circuit Judge

Friedrich Lu on brief pro se.

George A. Berman, Deirdre M. Giblin and Posternak, Blankstein & Lund, L.L.P. on brief for appellees Jeffey C. Turk, David F. Hadlock, Karen Schultz Breda, George A. Berman, Andrea F. Nuciforo, Jr., and Posternak, Blankstein & Lund, L.L.P.

Russell F. Conn and Conn, Kavanaugh, Rosenthal, Peisch & Ford, L.L.P. on brief for appellees Michael J. Powers, Russell F. Conn, Maria E. DeLuzio, and Conn, Kavanaugh, Rosenthal, Peisch & Ford, L.L.P.

Laurence M. Starr on brief for appellee Laurence M. Starr.

Ronald L. Brandt on brief for appellees Ronald L. Brandt and Brandt, Kramer & Figman.

Cameron F. Kerry, Michael J. Gill and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. on brief for appellees Richard Portal, Cameron F. Kerry, Michael J. Gill, Wayne P. Godin and Mintz, Levin, Cohn, 2> Ferris, Glovsky and Popeo, P.C.

Acheson H. Callaghan, Jr., Kenneth W. Salinger and Palmer & Dodge L.L.P. on brief for appellees Gerald T. Anglin and Tommasino & Tommasino.

Jeffrey C. Turk and McCullough, Stievator & Polvere on brief for appellees Willard S. Stievator and McCullough, Stievator & Polvere.

FEBRUARY 28, 1997

3>

Per Curiam. For the reasons stated in the district Court order, appellant's complaint properly was dismissed for want of federal subject matter jurisdiction. Further, we perceive no error or abuse of discretion in the district court's summary rejection of appellant's post-dismissal motions for reconsideration, recusal, and amendment of the complaint. And we find no merit in appellant's additional contentions regarding discovery, sanctions, and attorney conduct.

The judgment is affirmed. See 1st Cir. Loc. R. 27.1. Appellant's motions for default and expedited review are denied, as are his requests for costs and for publication of this opinion.

4>

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-2243

FRIEDRICH LU,
Plaintiff, Appellant,
v.
DAVID F. HADLOCK, ET AL.,
Defendant, Appellees.

JUDGMENT
Enbtered: February 28, 1997

This cause came on to be submitted on the basis the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The Judgment of the district court is affirmed. See 1st Cir. Loc. R. 27.1. Appellant's motions for default and expedited review are denied, as are his requests for costs and for publication of this opinion.

By The Court:
William H. Ng
Clerk

[cc: Messrs. Lu, Berman, Conn, Starr, Brandt, Kerry, Callaghan, Jr. & Turk]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-2243

FRIEDRICH LU,
Plaintiff, Appellant,
v.
DAVID F. HADLOCK, ET AL.,
Defendant, Appellees.

Before
Torruella, Chief Judge.
Cyr, Senior Circuit Judge.
Selya, Boudin and Stahl,
Circuit Judge

ORDER OF COURT
Entered: March 27, 1997

Upon careful consideration of appellant's Petition for Rehearing and Suggestion for Rehearing in Banc, it is denied.

By The Court:
William H. Ng /s/
Clerk.

(cc: Messrs. Gill, Callaghan, Sallinger, GArdner, Brandt, Kerry, Starr, Conn, Berman, Lu & Ms. Giblin)

UNITED STSATES DISTRICT COURT
DISTRICT OF MASSASCHUSETTS
Civil Action No. 95-12041-GAO

Friedrich Lu, Plaintiff v.

David F. Hadlock, Jeffey C. Turk,, Michael J. Powers, Karen Schultz Breda, Laurence M. Starr, Richard Portal, Nestor Hernandez, Antonio Familia, George A. Berman, Andrea F. Nuciforo, Jr., and Posternak, Blankstein & Lund, Russell F. Conn, Maria E. DeLuzio, and Conn, Kavanaugh, Rosenthal, Peisch & Ford, Cameron F. Kerry, Michael J. Gill, Wayne P. Godin and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Ronald L. Brandt and Brandt, Kramer & Figman, Gerald T. AAnglin and Tommasino & Tommaasino, Willard Stievator and McCullough, Stievator & Polvere, Defendants

FIRST AMENDED COMPLAINT

Parties

1) Plaintiff is Friedrich Lu, a resident of Massachusetts.

2) All defendants are either natural persons or partnerships in Massachusetts. All natural person defendants, excluding Richard Portal, Nestor Hernandez, Antonio Familia and Wayne P. Godin, are attorneys.

Jurisdiction

3) This court has jurisdiction over this matter pursuant to 28 USC § 1831.

Statement of Facts

Paragraphs 4 to 10 are a review of history and parties involved.

4) A pro se litigant now, plaintiff was a client (in the eviction case) of Attorney David F. Hadlock (Hadlock) and Jeffrey C. Turk (Turk) of now defunct law firm called Hadlock and Powers, whose partners were Hadlock and Michael J. Powers (Powers). Powers is also admitted in Florida and New York.

5) Plaintiff, Nestor Hernandez and Antonio Familia were Portal's former tenants.

6)Hadlock and Turk in 1993 represented plaintiff in an eviction case at Boston Hosing Court. The adverse party was the landlord Richard Portal (Portal), whose counsel was, and has been Laurence M. Starr (Starr).

7)In January, 1994, Plaintiff, suffering from lead poisoning, sued Portal at Suffolk Superior Court (Civil Action No. 94-502). Which was transferred by Portal's counsel, Gerald T. Anglin, on a notice dated April 3, 1995, to Boston Housing Court (95-CV-517).

8) (a) Karen Schultz Breda, Esq, an employee of Hadlock and formerly represented Hadlock, Turk and Powers at the early phase of legal malpractice suit (Suffolk Superior Court Civil Action No. 94-5096).

(b) After Attorney Breda withdrew, counsel for Hadlock and Turk are George A. Berman and Andrea F. Nucifora, Jr. of a law firm called Posternak, Blankstein & Lund, 2> whereas counsel for Powers are Russell F. Conn and Maria E. DeLuzio of a law firm called Conn, Kavanaugh, Rosenthal, Peisch & Ford.

9) On April 28, 1995, plaintiff sued Starr, Portal, Nestor Hernandez, and Antonio Familiaa for wrongful eviction and collusion with other attorneys, including plaintiff's former counsel. This case is Superior Court Civil Action No. 95-2325. Ronald L. Brandt of Brandt, Kramer & Figman represents Starr, whereas Cameron F. Kerry, Michael J, Gill and Wayne P. Godin (a paralegal) of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., represent Portal. The latter law firm also has an office at Washington, D.C.

10) Cameron F. Kerry, Michael J. Gill and Wayne P. Godin also represent Portal in the lead poisoning case (Boston Housing Court 95-CV-517). Portal's other attorneys in the case are Starr and Gerald T. Anglin.

A. The Eviction Case

11) Nestor Hernandez fraudulently obtained Supplemental Security Income and hid crucial facts to the administration agency. he used the income to invest in the enterprise. Portal committed several insurance frauds by falsely claiming loss of property in break-ins.

12) To get utilities for his vacant apartments, which he needed for gas heating and for electric tool in renovation work, he created fictional characters and caused utility bills to be mailed to the fictional characters in his apartments. When utilities companies, fed up with the phantom customers for no payment, cut off the utilities, Portal proceeded to create another fictional character. even before plaintiff moved in, Portal had called Boston Gas, impersonating plaintiff, in order to get gas heating under plaintiff's name to heat Portal's vacant apartment.

13) In March, 1993, Portal desperately recruited plaintiff as his tenant at one of his properties, 17 Chilcott Place, Apt #3, Jamaica Plain, MA. Portal's insurance policy was to be canceled for violation. And he desperately needed loan; without insurance, he could not get any loan. Three weeks after plaintiff moved in, Portal brought an insurance

agent and got insurance renewed. Afterwards, Portal forged various documents to get a loan from BayBank, as he did with other banks.
14) Two days after the insurance agent came in March, 1993, Portal asked plaintiff to move out. When plaintiff refused, Nestor Hernandez and Portal conspired to threaten plaintiff with bodily harm. Then Portal caused plaintiff to be poisoned by lead. Eventually Portal went to Boston Housing Court to have plaintiff evicted.
15) On August 11, 1993, Turk (who along with Hadlock represented plaintiff in the eviction case) mailed, or caused to be ,ailed, a bill to plaintiff for service rendered from August 3 to August 10, 1993, in which $308.34 of retainer was unaccounted for. Plaintiff has asked Turk and Hadlock to explain. For 2 years, neither has responded.
3> 16) On May 10, 1994, Hadlock mailed or caused to be mailed a letter to Board of Bar Overseers, (a) promising a look into the fee matter, and (b) stating that (regarding plaintiff's complaint that for months plaintiff could not get his file back) his law firm had called plaintiff and received no response from plaintiff.
17) In or about March, 1995, Portal forged Antonio Familia's signature, and declared under penalties of perjury that the whole families of Antonio Familia and his sister then lived there, in order to conceal the fact that Portal's 3-apartment building was vacant in 2 out of 3 apartments. Portal then mailed, or caused to be mailed, the census form to Boston City Hall. Portal also forged signature of Daniel Hernandez (in 1993 and 1994) and many others, and falsely declared the existence of those fictional characters to Boston for the same purpose in previous years.

B. The Lead Poisoning Case:

18) On October 21, 1994, per a superior court order, Starr mailed, or caused to be mailed a forged lease purportedly signed by Portal and Antonio Familia.
19) On January 20, 1995, Starr mailed, or caused to be mailed, a certificate of compliance with Superior Court Rules 9A and 9C, which stated that Starr had "attempted to contact Plaintiff at the [phone] number" of [where plaintiff could be reached], but was unable to connect." In fact, Starr had never called.
20) On January 30, 1995, in response to a superior court order to produce Antonio Familia's address, Starr and Portal gave a false address. Starr and Portal provided in a joint pre-trial memorandum a false address for Nestor Hernndez, whom, along with Antonio Familia, plaintiff had sought to depose.

21) (a) On April 3, 1995, claiming that the lead poisoning case is "within the subject matter and geographic jurisdiction" of Boston Housing Court, Gerald T. Anglin mailed, or caused to be mailed, a notice of transfer to transfer the case from Suffolk Superior Court to Boston Housing Court.

(b) On April 5, 1995, Starr mailed, or cause to be mailed a letter to plaintiff, confirming a final pre-trail conference to be held on April 7, 1995.

(c)On April 7, 1995 (a Friday), Starr (but not Gerald T. Anglin) appeared at the Suffolk Superior Court and announced, to the astonishment of every one, that the lead poisoning case (which had been scheduled for trial on Monday, April 10, 1995) had been transferred out of Superior Court.

C. The Legal Malpractice Case:

22) Shortly before and after the malpractice case was filed, Hadlock, Turk and Powers colluded with various lawyers, Starr included, to harm plaintiff. 4>

23) On October 18, 1994, Karen Schultz Breda filed an emergency motion for protective order to foil plaintiff's deposition to be held in the next several days.

24) On November 19, 1994, deposition on Turk was suspended at the request of Turk and Karen Schultz Breda, who promised to come back the following day. The deposition would never resume. See the paragraphs 25 to 29.

25) On December 5, 1994, Turk's new counsel, Andrea F. Nuciforo, Jr. mailed or caused to be mailed a letter, informing plaintiff that Turk would be available to appear for deposition on any of the following dates: December 12, 14, 16, 19, 1994, whereas they did not intend any deposition to occur.

26) Afterwards, plaintiff contacted Conn, Kavanaugh, Rosenthal, Peisch & Ford, and was told that Maria E. DeLuzio (co-counsel for Powers) would be available on December 19, 1994. Thus plaintiff replied to Andrea F. Nuciforo, Jr. that deposition should be held on December 19, 1994. Andrea F. Nuciforo, Jr. mailed or caused to be mailed a letter to confirm the December 19 deposition date. Then Maria E. DeLuzio called to say that she had a pre-arranged matter on December 19 and requested to reschedule deposition.

27) On December 21, 1994, plaintiff set December 29 for Turk's deposition, and inform every other party that if they wished to postpone the deposition, they had to get a protective order.

28) On December 23, 1994, Andrea F. Nuciforo, Jr. mailed, or caused to be mailed, a confirmation letter on that deposition date.
29)In the morning of December 29, 1994, Andrea F. Nuciforo, Jr. informed plaintiff that Turk would not be available for deposition, nor would he respond when confronted for a reason. Turk did not come to deposition later that date, nor did he seek protective order.
30) On January 9, 1995, Hadlock, Turk, and their counsel (George A. Berman & Andrea F. Nuciforo, Jr.), in their opposition to plaintiff's Motion to Amend Complaint there, deliberately and fraudulently distorted plaintiff's motion, contending that plaintiff was accusing Hadlock, Turk and Powers of collusion with their *own* former counsel, Karen Schultz Breda. In fact, plaintiff had repeatedly warned them not to collude with *Starr*. Hadlock, Turk and their counsel mailed or caused to be mailed a copy of this opposition to codefendant Powers.
30a) Their distortion prejudiced plaintiff, causing plaintiff's Motion to Amend Complaint to be denied without a reason by the court. Also for the same reason, plaintiff Motion for Preliminary Injunction to enjoin further collusion between plaintiff's former counsel and Starr was denied without an explanation.
31) In January, 1995, Hadlock and Turk (but not Powers) sought a dismissal of complaint. Two months later, the case was stayed. 5>
D. Wrongful Eviction Case:
32) (a) On June 22, 1995, Cameron F. Kerry and Michael J. Gill Purportedly mailed, or caused to be mailed, a Motion to Extend time to Answer, whose version turned out to be completely different from that submitted *ex parte* to the court described in the next paragraph.

(b) On June 28, 1995, Cameron F. Kerry and Michael J. Gill, at Suffolk Superior Court on a *ex parte*, emergency basis, deliberately excluded plaintiff and committed fraud on the court to gain advantage.

(c) On June 29, 1995, Cameron F. Kerry, Michael J. Gill and Portal mailed, or caused to be mailed, the court orders for the 2 allowed motions: Emergency Motion for the Protective Order and Motion to Extend Time to Answer.
33) On July 12, 1995, Cameron F. Kerry, Michael J. Gill and Portal served a motion for further protective order for Portal.
33a) On July 14, 1995, Cameron F. Kerry, Michael J. Gill and Portal mailed, or caused to be mailed, a false affidavit in support of their opposition to Rule 11 sanction.

33b) On July 25, 1995, Michael J. Gill mailed, or caused to be mailed, a list of motions to be filed with Suffolk Superior Court, which deliberately and fraudulently withheld plaintiff's opposition to their motion for further protective order mentioned in par. 33.
34) On august 2, 1995, trying to force plaintiff his motion to compel, Ronald L. Brandt, counsel for Starr, mailed or cause to be mailed a letter to plaintiff in which Attorney Brandt falsely asserted, " [A]t no time have I received a copy" of said motion.
35) On August 23, 1995, Cameron F. Kerry and Michael J. Gill entered their appearance for Portal at Boston Housing Court (Civil Action No. 95-CV-517).
36) On August 31, 1995, Turk again disregarded his fiduciary duty to plaintiff, now representing witness Willard Stievator to fight plaintiff's subpoena to said witness, and mailed or caused to be mailed to plaintiff a Motion for Protective Order for said witness.
36a) On September 11, 1995, pursuant to Rule 9A of Massachusetts Superior Court, plaintiff hand delivered to Turk: (i) plaintiff's opposition to motion for said witness's protective order, *and* (2) plaintiff's cross-motion to disqualify Turk as counsel for said witness. By Rule 9A, Turk and said witness should have filed both of plaintiff's papers to the court by September 21, 1995. Instead Turk and said witness only filed or caused to be filed their Motion to Protective Order on September 20, 1995, without either of plaintiff's paper, violating Rule 9A outright and intending to prejudice plaintiff.
36b) September 27, 1995, is the day to hear their Motion for Protective Order for said witness. Only then did Turk file plaintiff's opposition shortly before the hearing --Turk 6> did so only at the urging of Assistant Clerk. The motion judge at Suffolk Superior Court could not have time to read plaintiff's opposition and therefore allowed their motion, causing prejudice to this plaintiff.
36c) Up to the hearing on September 27, 1995 (which was yesterday), Turk and said witness did not initiate or conduct the *required* conference between Turk and plaintiff, which is mandated under Rule 9C of Massachusetts Superior Court. Turk and said witness did not file *required* Certificate of Service (which shall explicitly list the contents of paper filed to the court). Nor did they file plaintiff's cross-motion to disqualify Turk. All rules were broken.
37) (a) On August 31, 1995, Michael J. Gill and Portal mailed, or caused to be mailed a forged lease purportedly signed by Portal and Antonio Familia

(b) On September 6, 1995, Michael J. Gill and Portal mailed, or caused to be mailed a response to interrogatories propounded to Portal, which contained deliberately false and fraudulent information regarding whether people were Portal's former tenants.

38) The scheme is ongoing and open ended.
39) All defendants combine to harass and deter plaintiff from his right to justice in court by massive, concerted, and purposeful group activities.
40) This conspiracy has injured plaintiff's trade and/or property interest. Plaintiff also suffers loss of money.
41) A demand letter was sent pursuant to Massachusetts G. L. c. 93A, § 9 (Exhibit A), requesting, *inter alia*, cease-and-desist of all illegal activities. The letter was turned down.

E. Counts

Paragraphs 11 to 36 are repeated before every and each count below.
42) Count One: Sherman Antitrust act (15 USC § 1)
All defendants contract, combine in the form of trust or otherwise, or conspire, in restraint of trade or commerce among several states.
43) Count Two: Sherman Antitrust act (15 USC § 2)
All defendants monopolize, attempt to monopolize, or combine or conspire to monopolize trade or commerce among several states.
44) Count Three: Massachusetts Antitrust Act (G. L. c. 93)
All defendants contract, combine in the form of trust or otherwise, or conspire, in restraint of trade or commerce in Massachusetts.
45) Count Four: G. L. c. 93A, § 11 (unfair trade practice)
Plaintiff engages in the conduct of trade or commerce, and suffers loss of money or property, real or personal, as a result of the use or employment by all defendants who 7> engage in trade or commerce of an unfair method of competition or an unfair or deceptive act or practice declared unlawful.
46) Count Five: Racketeer influenced Corrupt Organization Act (RICO; 18 USC § 1961 et seq.)
All defendants conspire to violate or violate RICO through a pattern of racketeering activities. Enterprise is Hadlock, Turk, Powers, Portal, Starr and Nestor Hernandez. All other defendants are RICO "person,"
47) Count Six: Breach of Fiduciary Duty
Hadlock, Turk, and Powers colluded with others attorneys(including Starr) to harm, and has harmed, plaintiff repeaatedly and continuously.

48) Count Seven: G. L. c. 93A, § 9 (Consumer Protection)
Plaintiff has been injured by Portal, Hadlock, Turk and Powers who use or employ a method, act or practice declared to be unlawful.
49) Count Eight: Intentional Infliction of Emotional Distress
By extreme and outrageous conduct which is beyond all possible bounds of decency and utterly intolerable in a civilized community, Hadlock, Turk, Powers, Portal and Starr intentionally or recklessly causes severe emotional distress.
50) Count Nine: Aiding and Abetting
All defendants other than those 5 named in Count Eight know that conduct of those 5 constitutes a breach of duty and still give substantial assistance or encouragement to those 5 so to conduct themselves.
51) Count Ten: Civil conspiracy.
All defendants combines and conspire to harm plaintiff by illegal means to achieve illegal purpose. Their combination possess a peculiar power of coercion, due to mere force of numbers acting in unison or other exceptional circumstances.

Request for Relief

52) WHEREFORE, plaintiff demands judgment against defendant in n amount to be determined at trial--threefold when laws so dictate, plus interest, costs of suit and other relief as this Honorable Court deems just.

Jury Demand

53) Plaintiff requests jury trial on all issues.

Plaintiff: Friedrich Lu
Signed:
Date: September 28, 1995
Address: 65 Pearson Ave. #3, Somerville, MA 02144
Telephone: (617) 776-3369 leave message

To: David F. Hadlock,
Michael J. Powers,
Jeffrey C. Turk
mail to Messrs. Hadlock and Powers at One Washington Mall, Boston
From Friedrich Lu, Claimant Friedrich Lu /s/
Dated: August 7, 1995

This is a demand letter under Massachusetts Consumer Protection Act (G.L. c. 93A, § 9). You have acted in unfair and deceptive manner, and has been violating my right as consumer. I, as a claimant, anticipates relief within 30 days; otherwise I will pursue multiple demands and legal expenses.

In 1993, you were my lawyers and represented my in an eviction case at Boston Housing Court. Some of my retainer fee, several hundred dollars, were never accounted for. In or about October, 1993, in person I asked Mr. Jeffrey C. Turk to provide an detailed bill for that part of money. He promised to check into it but has never replied since. One of my complaints to Massachusetts Board of Bar Overseers was about the missing retainer. Mr. David F. Hadlock promised that he'd look into it and has not replied since.

In January and February, 1994, I made numerous oral and written requests to get my legal files back. Mr. Hadlock deliberately withheld my file in his law office for 6 months, severely impeding my effort to prosecute the lead poisoning case, while at the same time lying to the Board of Overseers why he had not returned my file. In contrast, you (all three of you) swiftly handed my files to Mr. Laurence M. Starr.

I filed a malpractice suit against you in September, 1994 at a Massachusetts superior court. Before and after that, you breached the fiduciary duty and conspired with various attorneys and law firms (including Mr. Laurence M. Starr together his client, Mr. Richard Portal) to harm, and did harm, me. Which includes, but not limited to, exchange of confidential, privileged information and documents You orchestrate and coordinate many covert, unethical and illegal activities against me, despite my repeated warnings not to do so.

The injury suffered includes intentional infliction of emotional distress, excessive and unnecessary legal costs from my pocket, and diminution or elimination of my legal return.

The demands for relief:

(1) immediately cease and desist from all aforesaid activities.

(2) monetary relief

CANON 5 A Lawyer Should Exercise Independent Professional Judgment on behalf a Client

DISCIPLINARY RULES

DR 5-101. Refusing Employment When the Interests of the Lawyer May be Impair His Independent Professional Judgment

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

(B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

DR 5-102.Withdrawal as Counsel When the Lawyer Becomes a Witness

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101(B), (1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

DR 5-103 Avoiding Acquisition of Interest in Litigation

(A) A Lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client, except that he may:

(1) Acquire a lien granted by law to secure his fee or expenses.

(2) Contract with a client for a reasonable contingent fee in a civil case.

(B) While representing a client in connection with contemplated or pending litigation, lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expense of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

DR 5-105. Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer

(A) A lawyer shall decline proffered employment is the exercise of his independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner or associate or any other lawyer associated with him or his firm may accept or continue such employment. A lawyer employed by the Public Counsel Division of the Committee for Public Counsel Services and a lawyer assigned to represent clients by the Private Counsel Division of that Committee are not considered associated. Lawyers are not

considered to be associated merely because they have each individually been assigned to represent clients by the Committee for Public Counsel Services through its Private Counsel Division.,

DR 7-104 Communicating with One of Adverse Interest

(A) During the course of his representation of a client, a lawyer shall not:

(1) communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are not or have a reasonable possibility of being in conflict with the interests of his client.